

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LAUREL PARK COMMUNITY, LLC, a Washington  
limited liability company; TUMWATER ESTATES  
INVESTORS, a California limited partnership;  
VELKOMMEN MOBILE PARK, LLC, a Washington  
limited liability company; and MANUFACTURED  
HOUSING COMMUNITIES OF WASHINGTON, a  
Washington non-profit corporation,

Plaintiffs,

v.

CITY OF TUMWATER, a municipal corporation,

Defendant.

No. 3:09-cv-05312-BHS

SUPPLEMENTAL  
DECLARATION OF  
SCOTT MISSALL

Scott Missall declares and states as follows:

1. I am an attorney at Short Cressman & Burgess and represented Laurel Park Community, LLC, Tumwater Estates Investors, and Manufactured Housing Communities of Washington in an appeal before the Western Washington Growth Management Hearings Board ("Board") and the subsequent judicial appeal to Thurston County Superior Court (Judge Thomas McPhee). I am over the age of 18, competent to be a witness, and make this declaration based on personal knowledge.

2. As I indicated in my original January 26, 2010 declaration, my clients filed a petition for review with the Board alleging various violations of the Growth Management Act,

1 Chap. 36.70A RCW ("GMA"), and provisions of the federal and state constitutions based on the  
 2 City of Tumwater's enactment of two ordinances establishing an exclusive manufactured home  
 3 park zone district ("District") within Tumwater.

4 3. The Board issued three final decisions in the case (the October 13, 2009 Final  
 5 Decision & Order; the November 12, 2009 Reconsideration Order; and the March 25, 2010  
 6 Compliance Order). The first two decisions found that Tumwater had committed errors in its  
 7 review and approval of the two ordinances and remanded them to Tumwater for compliance with  
 8 the GMA. The third decision found that Tumwater's compliance process had cured the original  
 9 problems regarding the ordinances, but was issued by a 2-1 vote (Presiding Officer McNamara  
 10 dissenting). All three final decisions were appealed to Thurston County Superior Court  
 11 (Judge McPhee), and were consolidated for briefing and argument.

13 4. Judge McPhee heard the consolidated appeals on September 3, 2010, and issued  
 14 his oral ruling upholding the Board's Compliance Order on September 7, 2010. That ruling was  
 15 reduced to writing on September 17, 2010.

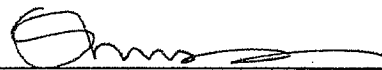
16 5. At the conclusion of the argument on September 3rd, Judge McPhee *sua sponte*  
 17 observed that my clients' were not land speculators or land developers as contended by  
 18 Tumwater, but were legitimate business persons operating manufactured housing parks. Judge  
 19 McPhee stated:  
 20

21 Ms. Drummond [counsel for Tumwater], let me make a comment to you if I  
 22 may. One argument that you made that will and does not resonate with me is  
 23 the contention that these petitioners are speculators. I understand your  
 24 argument in that regard and will give it consideration but without considering  
 25 the description as "speculation" or as "speculators." I think those terms are, in  
 26 a sense, pejorative in the context of land development. And there is nothing in  
 the record that suggests that these petitioners fit that category. I am made  
 uncomfortable by the argument, because if I rule in your favor, one might  
 conclude that I accepted that argument; and I don't. And if I do rule in your

1 favor, it will be on the strength of your legal arguments, not your description  
2 of these folks. And so you may want to reconsider those descriptions if the  
case goes forward.

3 6. Attached to this declaration as exhibit A is a true and accurate copy of page 73 of  
4 the transcript from the September 3, 2010 hearing.

5 I declare under penalty of perjury under the laws of the State of Washington that the  
6 foregoing is true and correct. Executed at Seattle, Washington, this 3<sup>RD</sup> day of March, 2011.

7  
8   
9 Scott M. Missall, WSBA 14465

# EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

LAUREL PARK COMMUNITY, LLC., a  
Washington limited liability  
company; MANUFACTURED HOUSING  
COMMUNITIES OF WASHINGTON, a  
Washington nonprofit corporation;  
corporation; and TUMWATER ESTATES  
INVESTORS, a California Limited  
Partnership,

Petitioner,

vs.

CITY OF TUMWATER, a Washington  
municipal corporation; and WESTERN  
WASHINGTON GROWTH MANAGEMENT  
HEARINGS BOARD, an agency of the  
State of Washington,

Respondents.

No. 09-2-02687-1

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 3rd day of September, 2010,  
the above-entitled and numbered cause came on for hearing  
before the Honorable Thomas McPhee, Judge, Thurston County  
Superior Court, Olympia, Washington.

Kathryn A. Beehler, CCR No. 2448  
Thurston County Superior Court  
2000 Lakeridge Drive S.W.  
Olympia, WA 98502  
(360) 754-4370

1 travel that's involved in it for at least several  
2 of you. And I'll give you my decision at that  
3 time.

4 Ms. Drummond, let me make a comment to you  
5 if I may. One argument that you made that will  
6 and does not resonate with me is the contention  
7 that these petitioners are speculators. I  
8 understand your argument in that regard and will  
9 give it consideration but without considering the  
10 description as "speculation" or as "speculators."  
11 I think those terms are, in a sense, pejorative in  
12 the context of land development. And there is  
13 nothing in the record that suggests that these  
14 petitioners fit that category.

15 I am made uncomfortable by the argument,  
16 because if I rule in your favor, one might  
17 conclude that I accepted that argument; and I  
18 don't. And if I do rule in your favor, it will be  
19 on the strength of your legal arguments, not your  
20 description of these folks. And so you may want  
21 to reconsider those descriptions if the case goes  
22 forward.

23 MS. DRUMMOND: I understand, Your Honor.

24 THE COURT: If there's nothing further,  
25 we'll stand in recess.